The Principle of Sectarianism in the Constitution of Canada

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THE PRINCIPLE OF SECTARIANISM IN THE CANADIAN CONSTITUTION.

THE CRISIS WHICH LED TO CONFEDERATION.

IN 1864 the Legislative Union, under which the Provinces of Ontario and Quebec had been governed since 1841, had come to a dead-lock. One short-lived administration succeeded to another, and the country was without stable or satisfactory government, a majority from one province often combining with a minorlty from another to force upon the latter legislation which it did not approve of. The Ontario Liberals, in particular, then led by George Brown, complained that their Reform measures, their endeavours, for example, to free themselves from the "dominant Anglican establishment" and their struggles for economic reforms had been constantly opposed by "the French Canadian members of the Cabinet and their supporters". "The French Canadians", Mr. Brown wrote, in a historic letter to the Roman Catholics of Ontario, "felt their power and used it relentlessly....by their unity of action they obtained complete dominancy in the management of public affairs". (See *Mackenzie's Life of Hon. George Brown*, p. 123).

For some time Mr. Brown had advocated as the only remedy for these evils a reformed system of representation on the basis of population. Under that system Ontario, which had the larger population and paid a much greater share of the taxation, would obtain what he considered a fair measure of control over legislation. Naturally the proposal of Mr. Brown and the Upper Canada Liberals was ill-received by the French-Canadians, who had conceded equal representation to Ontario in 1841, when that province was still inferior in population to Quebec. Nevertheless, the scheme was in accordance with modern constitutional ideas, especially with Reform ideas, and became a rallying cry for Ontario Liberalism which French-Canadians felt it would be difficult to withstand, though they saw it would put their peculiar provincial institutions, and in

particular their religious and educational ones, to some extent at the mercy of an Ontario majority. One does not need to read far into the debates of 1865 on Confederation to see that it was mainly to avoid these consequences that the French-Canadians of Quebec, as a whole, were induced to enter into a scheme of Confederation with the other provinces of British North America. Some of their leaders saw still greater dangers threatening their racial existence and traditions, from which only a strong Confederation of the British North American provinces, supported by the power of the British Empire, could, as they said, save them. They saw that the growing might of the American Union and the somewhat aggressive attitude it had begun to assume was certain sooner or later to absorb the weak and scattered provinces to the north. They foresaw the inevitable extinction of their peculiar institutions and traditions in such a Union ; they foresaw as their own the fate which had befallen their brethren of Louisiana. Such in fact were the arguments with which the French-Canadian fathers of Confederation, Sir E. P. Taché, Cartier and Langevin, appealed to their Quebec compatriots in the great debates on Confederation. (See Debates on Confederation, Feb. 3, 7, 21). Absorption and racial extinction in the American Union, or Confederation with the support of the British Empire, those were the alternatives which the French-Canadian leaders laid before their people.

The proposal for Confederation had often been mooted before, but in 1864 circumstances were exceptionally favourable for its realization. There was the dead-lock in the legislative affairs of the two Canadas; there was the aggressive attitude of certain parties in the United States, and, as it happened, the Maritime Provinces at the suggestion of Mr. Tupper, then Premier of Nova Scotia, was about to meet to consider a union of their own. That was the situation of affairs when George Brown, the leader of the Ontario Liberals, approached the Macdonald-Cartier Government with a proposal to unite their forces and carry through a scheme of Confederation for all the provinces of British North America. The Macdonald-Cartier Government took up the scheme ; a Coalition government was formed, in which Sir E. P. Taché was Premier, and Macdonald,

Cartier and Brown members of the Cabinet. Brown naturally had refused to serve in a ministry of which either of his great opponents, Macdonald and Cartier, should be the head. Delegates were appointed to meet those of the Maritime Provinces at Charlottetown, and the whole body of them were ultimately empowered by their governments to assemble at Quebec and agree as to the terms on which the provinces would enter into a Confederation. These terms were embodied in the Quebec Resolutions of 1864.

THE QUEBEC RESOLUTIONS.

At the Conference, which was held with closed doors, Macdonald expressed himself in favour of a legislative union of all the Provinces as the more economical and the stronger form of unification ; the sentiment of Upper Canada in general was favourable to that view. But Cartier and the French-Canadian members were resolved that the essential principle of the union should be federal, leaving each province full control of its own affairs, and in the debates which afterwards took place in the Legislature on these Resolutions the Hon. Hector Langevin, who had been one of the delegates, explicitly stated that many of the restrictions upon the powers of the Federal government had been made to satisfy the Lower Canadians, and in particular the question of education had for that reason "been left to our local legislature, so that the Federal Legislature shall not be able to interfere with it." (Debate on Confederation, pp. 373 and 387). He knew, as they all did, that the fullest possible local autonomy was a necessary condition to obtain the consent of the French-Canadian members and the French-Canadian people to Confederation. The feeling of the Maritime Provinces, also, went in the same direction.

But there was another section of the Canadians that considered their position also required special safeguards in the new Constitution. This was the Protestant minority in Lower Canada. This section was represented particularly by the Hon. A. T. Galt, Minister of Finance in the Coalition government, and one of the Quebec delegates. As a matter of fact the Protestant minority in Quebec had been well treated in the matter of their separate schools, but their position was not

legally secure, and it would in some ways be still further weakened when education in Quebec passed, as it would necessarily do after Confederation, into the control of the Local Legislature. There were also the rights of the Catholic minority in Ontario to be considered. To meet the difficulty the 43rd section of the Quebec Resolutions was agreed upon. That section gave every province which should enter Confederation the exclusive right of legislation in education, but added the clause "saving the rights and privileges which the Protestant or Catholic minority in both Canadas (in Ontario and Quebec) may possess as to their denominational schools at the time when the Union goes into operation."

Nothing could be clearer and simpler than the terms of the Quebec Resolutions which were agreed upon as the basis of Confederation. That clause contains the original compact for the settlement of the religious or sectarian question in education. It was not meant to be applied to the other provinces; it was not meant to be applied to new provinces which might afterwards be created. The 10th article of the Resolutions, which deals with that contingency, simply states that "The North-West Territory, British Columbia and Vancouver shall be admitted into the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of Her Majesty." These Quebec Resolutions were presented to the Legislature of the two Canadas and voted by them as the terms on which they agreed to enter Confederation, and in accordance with that vote the usual address to the Queen was sent asking for an Imperial Act of Confederation. The Government of the two Canadas would not even accept any amendment on a single article. They explained that the Resolutions were of the nature of a treaty with the other provinces which could not be altered. Hon. John A. Macdonald, who moved the Address in the Assembly, said "We must consider this scheme in the light of a treaty.....I trust the scheme will be assented to as a whole." (Debate on Confederation, p. 31).

Many of the French-Canadian members were uneasy over the scheme. Some of them, like the Hon. Letellier de Saint Just, feared it would come sooner or later to a legislative union

in which the autonomy of Quebec would be lost. (See Debates, p. 263.) The Hon. Antoine Dorion tried to alarm the Upper Canada English by putting the matter in another way. "May it not happen," he asked, with prophetic soul, "that the majority from Lower Canada will unite with a minority from Upper Canada and impose upon that section a local Constitution distasteful to a large majority of the people of Upper Canada?" To all these objections the answer given by Cartier, by Macdonald, by Langevin and other leaders was always the same, namely that the essence of this Confederation is the Federal principle, the full recognition of local autonomy. Cartier's words defined the principle clearly:

> Under the Federation system, granting to the control of the General Government, those large questions of general interest *in which the differences of race and religion had no place*, it could not be pretended that the rights of either race or religion could be invaded at all. We were to have a General Government to deal with matters of defence tariff, excise, public works. (Debates, p. 60).

There may be doubt about many things in our Constitution, but there can be no doubt about the original compact on which Ontario and Quebec (they were the only two provinces that passed the Resolutions) consented to enter Confederation. Provincial autonomy was its fundamental principle, and the recognition of the principle of sectarianism was strictly confined to Ontario and Quebec. It was with the authority of the vote based on these Quebec Resolutions that the Canadian delegates in November, 1866, went to London to ask the Imperial Parliament to pass an Act for the constitution of what is now the Dominion of Canada. How, then, did this clear and simple settlement of the educational question made by the 46th article of the Quebec Resolutions come to be altered and obscured in the British North America Act of 1867?

POSITION OF THE PROTESTANT MINORITY IN QUEBEC.

The answer throws an illuminating light on the politics of the time. The clause in the 46th article of the Quebec Resolutions, protecting existing denominational rights in Ontario and Quebec, was not and was never meant to be, of itself, a sufficient protection for the Protestant minority in Quebec. They stood in a somewhat different position from the Catholic

minority in Ontario. The Catholics in Ontario were for various reasons more content with and more assured of their rights than the Protestants in Quebec. The Separate School law of 1863, which had been imposed upon Ontario by the preponderating influence of the French-Canadian members in the Sandfield-Macdonald-Sicotte Administration (See Pope's *Memoirs of Sir John A. Macdonald*, Vol. I, pp. 244 and 246, and compare Sir Wilfrid Laurier's remarks on the subject in his recent speech introducing the Bill for the North-West,) gave them a more effective machinery than the Protestants of Quebec possessed legally. The latter, although their actual privileges were as great as those of the minority in Ontario, or even greater, would be in a weaker position legally after Confederation, and they were besides much more afraid of the aggressive spirit and the control of a hierarchy. Therefore it had been agreed on by the delegates who drew up the Quebec Resolutions that the Legislature of the two Canadas should pass a Bill, *before Confederation took place*, to strengthen the legal position of the Separate Schools in Quebec. This arrangement was quite well understood as part of the compact, as a necessary accompaniment of article 46th of the Resolutions. In the debates which took place in the Legislative Assembly on the Resolutions both Macdonald and Cartier gave solemn assurances on the subject in answer to Mr. Holton. (Debates, p. 18 and p. 394.) The Hon. George Brown, in that very speech which Sir Wilfrid lately turned to such curious account, referred to this matter when he said that it was on "this understanding (of further legislation for the minority in Quebec) that the educational clause was adopted by the Conference"; and it is perfectly clear from his speech that he understood that there was to be no further extension of the sectarian system in the Confederation, no danger of it being extended "till the whole country was studded with nurseries of sectarianism." (Debates, p. 95.)

Well, what happened? The Government of the Canadas did attempt, as they promised, to pass a Bill during the last session of the old Legislature securing legally the privileges which the Protestant minority in Quebec enjoyed. But the French-Canadian members would not hear of it. Their

position was summarized thus by Hon. Mr. Cauchon : "We will pass a Bill in the Local Legislature later on, after Confederation, granting you these guarantees, but it is an insult on your part to try and impose them on us now." That is, the French-Canadian members refused to pass forestalling and unalterable legislation for their province, of the kind which Sir Wilfrid now seeks to impose on the North-West. So that the privileges of the Protestant minority in Quebec would have lacked any higher sanction than that of the Local Legislature unless some way had been found of safeguarding them in the British North America Act.

THE EDUCATIONAL CLAUSES IN THE ACT OF UNION.

In 1860 the Canadian delegates, as I have said, went to London to arrange with the Imperial Government for the passing of an Act creating a constitution for the Confederation, and the way they took to give the promised legal security to the Protestant minority in Quebec is seen in the curious 2nd and 3rd sub-sections of the 93rd sub-section. The 3rd sub-section declares that any separate school system which exists in *any* Province at the Union, *or is thereafter established by the Legislature of the Province,*" shall be protected against Provincial changes by the right of "appeal to the Governor-General in Council." This was obviously designed to make fast the legislation which Cartier and Langevin still promised to get for Galt and the Protestant minority in Quebec. But then M. Cauchon and his friends might refuse to pass it in the new Local Legislature. Therefore, no doubt, the 2nd sub-section was added (it does not appear in the early Drafts) extending all the rights enjoyed by the Catholic minority in Ontario to the Protestant minority in Quebec.

It would be difficult to discuss such changes without generalizing the principle of sectarian rights, and whether the delegates originally intended it or not, even in the early draft of 4th December, 1866, the general clause safeguarding sectarian privileges is extended to "any province . . . at the time when the union goes into operation." In addition to this, in the final form of the Act as passed by the Imperial Parliament, a new clause was added in the 146th section making the admission of

the North-West Territories into the union "subject to the Provisions of this Act." The general result then of the British North America Act of 1867, the Act of Confederation, was to establish the rights of the Separate School System, not in any general uniform way, but with the particular modifications under which it might exist by law in each of the provinces "at the union." And further its terms, particularly those of the 146th section, might be considered as extending the rights of Separate Schools to new provinces in the North-West, if certain conditions existed there.

It may seem surprising that a few delegates should venture on such material alterations of the Quebec Resolutions which had been so solemnly submitted to the Legislature and accepted as the conditions of Confederation. But both Sir John Macdonald and Sir George Cartier were men who stepped lightly over such obstacles, each guarding in his own way what he thought to be in the interests of his race. Mr. Brown was not on the deputation this time and Dr. Tupper was in a weak position politically. Besides Nova Scotia required better terms in other matters. These particular alterations, also, were really favourable to French-Canadian interests or such as they would not object to. Sir John knew his position well. In a letter which he wrote to Mr. Tilley of New Brunswick before leaving Canada, he said, "The measure must be carried *per saltum* and no echo of it must reverberate through the provinces until it becomes law . . . . Even Canada would be stirred to its depths if any material alterations were made. The Act once passed and beyond remedy, the people would soon learn to be reconciled to it." (Pope's *Memoirs of Sir John A. Macdonald*, Vol., I, 1308). It may be said, however, that the legislation of the Act of 1867 as regards education was fairly elastic and adjustable to the different conditions of different provinces. Only in the case of Ontario and Quebec were these condttions fixed. For the rest it carefully reserved to *any* other province the right to define by its legislation what its views of sectarian rights were and only permitted Federal interference by way of remedial legislation and after appeal. It is an important restriction, for the original right of legislation may determine many questions as to the legality of administrative machinery, right of

appeal, procedure and so forth, and thus permits a new province to adjust its legislation readily to the new conditions which are sure to arise in it. If therefore the sectarian rights accorded by the Act of Confederation are to be applied to any new provinces, *under the authority of that Act*, then that limitation as regards Federal interference must go with them. Sir Wilfrid Laurier, of course, is well aware of the fact. It is not, therefore, from either of the solemn compacts on which our Constitution rests, the Quebec Resolutions or the British North America Act of 1867, that Sir Wilfrid really derives any authority for the insertion of educational clauses in his recent Bill for the North-West. It is a much more doubtful kind of authority he has had recourse to, namely, the unconstitutional legislation of the Manitoba Act of 1870, and the exceptional legislation reqnired to ratify it in the Imperial Act of 1871. These are the precedents and authorities for which Sir Wilfrid has abandoned alike the Quebec Resolutions and the Act of the Union. The legislation for dependent Territories in 1875, has of course nothing to do with the question of initiatory Federal legislation *for a Province*. I shall consider it later on.

The Manitoba Act.

The Act establishing the Provinces of Manitoba in 1870, was passed by a Government of which Sir John Macdonald was the head but in which Sir George Cartier was, as he well merited to be, also a controlling power. The personal alliance between these two men represented a very fair balance of racial intetests, and partly perhaps for that reason they dealt more freely with the compact embodied in the Act of Union than it would be safe or just for an all-powerful Premier from either race to do. The situation in Manitoba was a difficult and dangerous one. The French half-breeds who then formed a majority of the population were uneasy as to the condltions under which they were to be incoperated into the Dominion ; they were uneasy about their rights to the land, and the French-Canadian clergy who had great influence with them were uneasy regarding their privileges and the grants they had obtained from the Hudson Bay Company for religious and educational purposes. And in addition there were a number of American annexationists in the territory who meant to give the Canadian Govern-

ment trouble. The first expeditionary force was then being organized and a few months before, on January 28, 1870, Sir John Macdonald had written to a friend: "It is quite evident to me . . . . from advices from Washington that the U. S. Government are resolved to do all they can, short of war, to get possession of the western territory." The Canadian Government, therefore, was obliged to give the most favourable terms to the new Province. It gave Manitoba a larger representation in Parliament than its population justified ; it set aside, to the great detriment of immigration, 1,400,000 acres of the best lands in the heart of the province for the benefit of the children of the half-breeds, in addition to granting them titles to the lands they already occupied. It also retained, contrary to the Provisions of the Act of Union, control of the rest of the public lands, "as a means of constructing railways to Columbia," Sir George Cartier explained. (Debates, May 9). The Government also, to placate the clergy and the French Catholic half-breeds, inserted provisions for sectarian education into the Act, much the same as those contained in the Act of Confederation, but just sufficiently altered to be in some degree an infringement of the Act, in details, as the insertion of them at all was, in principle.

It defined sectarian rights as those existing "by law *and practice*," the two last words being an addition which was partly dictated by experience of the difficulties which had then arisen over the question of Separate Schools in New Brunswick. However much it may have been justified by the exceptional and dangerous conditions of the district, the legislation for Manitoba was in all these respects a clear violation of the Constitution made partly to satisfy the French-Canadian clergy and soothe the feelings of Quebec which were naturally strongly enlisted in favour of the half-breeds. To crown all Section II of the Manitoba Act, contained a clause extending the Provisions of the Act of Confederation to the new Province, "*except so far as the same may be varied by this Act,*" That clause puts the new Province outside of the protection of the Constitution, as far as the framing of its own constitution was concerned. But the fact is that everybody recognized on both sides of the House that the dangerous con

ditions of the Red River Settlement required special legislation, and the great Act of Confederation with its careful Provisions for the balance of Federal and Provincial powers was practically dropped out of sight. Mr. Mackenzie, the Liberal leader, opposed the sectarian clauses. He said "education should be left to the people themselves "and that is was a mistake "to "initiate, permit or perpetuate "the Separate School System." (Debate, May 7). But he did so on open and general grounds, so far as I can learn from the newspaper reports of that time. And the Hon. Mr. Chauveau, who defended the sectarian clauses, did so, also, only on the general ground of expediency. He said, "it was desirable to protect the minority . . . There could (he said) be *no better model to follow than the Union Act* which gave full protection to minorities. It was impossibe to say yet who would form a majority there, Protestant or Catholic." (The Globe, May 10, 1870). Sir George Cartier argued, "the *propriety* of continuing this custom or practice (of grants) which had hitherto operated more to the advantage of Protestants than Catholics." There is no pretence in these arguments on either side that the sectarian provisions of the Act of Confederation must be applied in the case of a new Province. Yet the speakers were all men who had helped to make confederation and knew what was meant by that compact. The *Montreal Witness*, a pillar of stalwart Protestantism in those days, declared in a sarcastically worded article (May 7), that the Bill was simply a gross case of Sir John's subserviency to Sir George. "This extraordinary measure," it said, "is carried through by Sir George Cartier with jubilant defiance . . . . He sits beside Sir John to see that he says what was agreed upon with Father Richot, and prompting him if he leaves out any part of the bond ; and poor Sir John goes through with it." During the snceeding stages of the debate Sir John took to bed—"biliary calculus."

No doubt Cartier's influence was perceptible in the Bill, but I think also Sir John kept a fairly firm hand on the things he valued, and I am not sure but in that historic alliance of Macdonald and Cartier there was a safer and healthier life for the original compact, for the Act of Union, than there ever has been since. One cannot but recognize that it has for some

time become a one-sided affair under Sir Wilfrid Laurier. Who could be blind to the meaning of his ebullition over the Alaskan affair, or to the regretable want of magnanimity in his treatment of the Lord Dundonald incident? Who can be blind to the nature of the vengeance which keeps Manitoba a pigmy province in the midst of gigantic territories? What Premier of English race would have done that? The autocratic manner also in which Sir Wilfrid has dealt with this great constitutional question of North-West autonomy is really too evident. He has forgotten to consult his strongest colleagues amongst those who represent British and Protestant sentiment on this racial question; he has forgotten to consult Mr. Fielding and Mr. Sifton. One cannot but notice that they have become rather silent for some time back. A strange reticence has overtaken them under his rule. They must stay in the shade. Mr. Bourassa may speak freely, but not they. Everything, I am afraid, the hierarchy, the modern Rouges, (who have changed colour somewhat), the Irish agitator, has a better key to his heart than native British sentiment in Canada has. It is but natural, perhaps, but there is danger in it, though Sir Wilfrid is too wilful, Mr. Prefontaine too busy, and the gentlemen of Le Ligue Nationaliste too young to see it. One of the great merits of the old English Liberal school was that its members had a just appreciation of the law of action and reaction which makes coercive legislation so dangerous where racial feelings are concerned. And Sir Wilfrid used to pride himself on belonging to that school!

THE ACT OF 1871.

But to return to our story. The Manitoba Act was a kind of constitutional muddle. Mr. George Brown attacked it in *The Globe* (March 29, 1871,) as being without the sanction of the Act of Confederation and liable to be overturned by any future Parliament. It was to cover this defect and partly also, to dispose of a doubt, suggested by Mr. Mills, as to whether the Canadian Parliament really had powers to create a new Province, that the Government appealed to the Imperial Parliament for a new Act confirming what had been done and extending the powers of the Canadian Parliament in dealing with new Provinces. Sir John described it in the House as "a con-

firmatory Bill to secure the constitutionality of past legislation." This was the Act of 1871. It is a brief document in six articles. Its 5th article declares that the Manitoba Act "shall be deemed valid." Its 2nd article gives the Canadian Parliament unqualified powers "to make provision for the constitution and administration" of a new Province and "for the passing of laws for the peace, order and good government of such Province at the time of its establishment ; and its 6th article makes such legislation unalterable, except in the case of boundaries. It makes no reference to the Act of Confederation and its 146th section. It cannot be said that Canadian legislation shows any unnecessary candour on this subject of sectarianism.

Here, then, we are left at last with a clear constitutional position as far as new provinces are concerned. The Act of 1871 gives the Canadian Parliament power to deal with them as it pleases, in spite of anything in the Act of Confederation.

Sir Wilfrid, therefore, has now an excellent opportunity to establish that ideal of Provincial autonomy which he described so eloquently to the House during the debates on the Remedial Bill in 1896. "Coercive methods," he said, "never yet led any people to good or wise government." He praised the freedom of American legislatures and questioned the wisdom of the Constitution which gave the Dominion Parliament the power of interfering with Provincial legislation. He asked what was the cause of these frequent recurrences of agitations, and he answered that "on every occasion there was only one cause, always the same, and that was the feature of our constitution, which abridges the independence, the sovereignty of the provincial legislatures." He pointed out that it was hardly the condition of free government where a provincial minority can appeal to the Parliament and "thus force the issue which was confined to their own province into the Federal arena." (Debates, March 3rd, 1896.) That was his view then on the Manitoba school question. Yet now he comes forward with a proposal to abridge the liberties, the "independence, the sovereignty" of the new provinces as the liberties of no other provinces in the Dominion, hardly even the provinces of Quebec and Ontario, bound of old by mutual specific contract before Confederation, are abridged. For, after all, in an old

province, where the character of the population has fixed itself and a large homogeneous citizenship exists, the separate school system of a small minority cannot seriously affect the development of a good national or common system. But it may seriously weaken and hamper the educational system of a new province.

Is there anything, then, in the constitutional history of Canada which prevents Sir Wilfrid from carrying out, as regards sectarian issues at least, the ideal which he professed in 1896, anything which obliges him to deal in this despotic manner with free Canadian Provinces? Is he "the tool and victim of the Constitution," as he taunted Sir Charles Tupper with being, in 1896. I cannot see it. Every document in the constitutional history of the Dominion that could reasonably be taken as a guide is a precedent or a protest against initiatory coercive legislation on the part of the Federal Government in educational matters. Even the unconstitutional Act of Manitoba is no precedent in favour of it, for the Separate School provisions in it were inserted in accordance with the wishes of the majority, and, as was generally understood, at the request of Father Richot and their representatives. Even the Act of 1871, an Act framed to meet the exceptional and dangerous conditions which then existed in the West, an act which Sir Wilfrid is evidently ashamed to refer to, does not make such legislation necessary ; it only *permits* it, as it would permit the new provinces being made tributary fiefs of the Dominion. But there is one thing which will not permit it, and that is the sense which a free people have of their rights.

THE LEGISLATION OF 1875.

There is of course the legislation of 1875 for the North-West Territories on which and on the language Mr. Blake and others used in supporting it, Sir Wilfrid seems to rely a good deal as a precedent for his present course or as in some way a justification of it. But he is careful to avoid any close or direct treatment of the constitutional question here. He does not state precisely whether he refers to that legislation as a precedent for the Federal Parliament's imposing unalterable educational legislation *on a Prvoince,* or whether he considers it merely as creating those sectarian rights which the Federal

Parliament has a right to protect by remedial legislation if it is appealed to so to do. He judiciously allows the two things to get mixed up and cleverly quotes some sentences of Sir Alexander Campbell's in which they are mixed up. Then he proceeds to quote George Brown's opinion, used, probably, partly *in terrorem*, that if Separate Schools were introduced into that Bill of 1875, then "they were there for all time." But he does not state his own opinion on the subject. I wonder Dr. Sproule did not ask him for that. In any case in considering some of the opinions expressed at that time, one must keep in mind that the common school system of that day was not so fully and delicately organized in its relation to higher educational institutions and to the national life as it now is. They did not understand all its import, as we do now. I am no enemy of the Cathalic Church. I think with tenderness, not only of her historic past (which in a sense of course is also ours), but of much that is peculiarly her own. But I do not think her educational system and its traditions are such as we should forcibly impose on the new peoples of the West. I should be against burdening them for all time with the duty of maintaining religious communities which even the Catholic countries of the Old World have fought so desperately to expel. Really, when one considers it, what worse treatment did ever England, in the dark old days, give to Ireland than to impose an unpopular and non-national Establishment on the people and to take from them the control of their lands. Talk of the "old Colonial policy"; here it is in its worst form.

The legislation of 1875 affords of course no precedent for the manner of dealing with the constitution of a Province. It was provisional legislation, as Mr. MacKenzie, who introduced it, stated, and might be altered as the circumstances required. There was never anything in the Constitution to prevent the Dominion Parliament dealing with dependent territories as it pleased. It is a very different question how far such legislation, or any legislation which is controlled by Federal authority, can create sectarian rights under the Act of Confederation. Under that Act the one function of the Federal Parliament is to protect such rights on appeal, not to create them. Mr. Blake who moved the insertion of the educational clauses into the Bill did

not commit himself to any view on this constitutional aspect of the case. On general grounds he thought it was advisable to introduce some such Separate School System as they possessed in Ontario into the new territories. Very possibly also Mr. Blake thought such a system, if introduced then, might become a fixture ; it is a fair inference from his language. But to quote his authority for enforcing it, for fixing it in an unalterable form on an independent province which almost unanimously rejects it, is a very different matter. It is quite clear that the Act of 1871 at least relieves the Government from any obligation to do so. Or if the Government prefers to regard the Act of Confederation with its guarantee of sectarian rights as the proper authority for the case, then the way is equally plain, the Federal Government must wait till its right of remedial legislation is lawfully invoked. It has nothing to do with educational legislation at this stage. There is no moral or legal force in the clause guarding existing sectarian rights, if its accompanying limitations are treated as annulled. But the plain fact is that Sir Wilfrid in this North-West Bill is legislating for the new Provinces just as if they had no protection at all under the Act of Confederation. He uses that Act, he approbates and reprobates it, just as he pleases.

THE MORAL AUTHORITY OF THE RACIAL COMPACT.

This brings us to the last aspect of the question, an aspect which is not so much concerned with the letter of the Constitution as with the moral authority of the compact (so all the fathers of Confederation used to call it at the time) which the English and French races understood they were entering into, when they agreed to Confederation. In its original form of the Quebec Resolutions, the only form ever properly put before the people of Canada, there is not even a question of extending the principle of sectarian education by Federal authority beyond the limits of Quebec and Ontario. But let us waive that and come to its authoritative form in the Act of Confederation, which, after all, was a more deliberate and carefully considered form of the original compact, not to be departed from in its essential spirit except by common consent of the different provinces and races incorporated in the Dominion. And com-

mon consent here does not mean the consent of a mechanical vote from a Parliamentary majority dominated by ministerial influence. Sir Wilfrid once recognized that. How vigorously did he denounce Sir Charles Tupper in those days of 1896 for "forcing the project (of Confederation) down the throats of the people of Nova Scotia by the brute force of a mechanical majority."

What, then, was the essential substance of the compact by which these different races and provinces agreed to settle their religious differences in the matter of education? That was a vital question for them because it was the only great question on which their racial interests were felt to be absolutely exclusive of each other. The first point regarding it is this, that the Provincial autonomy was to be the dominant principle in educational legislation. And this was a point on which the French-Canadian people and their representatives had particularly insisted, as both Sir John Macdonald and Sir George Cartier reminded them at the time of the New Brunswick embroglio, as it used to be called. The second point is that they recognized the sectarian rights of minorities, outside of Ontario and Quebec, *not as general or uniform*, but as limited, casual and variable, according to the usages or even the will of these other provinces,* and they put these and these alone under the protection and within the scope of Federal legislation. The third point is that having thus had to introduce another and secondary source of legislation, they secured Provincial autonomy, the dominant principle, by giving the Province in every case the first right of making its laws respecting education and by stringently restricting the Federal Parliament to remedial legislation on appeal.

Such was the essential unalterable substance of the compact. If Sir Wilfrid then pretends to found his Bill for the North-West on the authority of the Act of Confederation, either in its letter or in that larger construction of it as a racial compact which still survives even when the letter of it has been broken, then there is but one way for him to proceed. He must leave legislation respecting education to the Provinces in the

* For example, it remained open to British Columbia to define its educational usage before entering the Confederation. And so it did, against the Separate School system.

first instance and content himself with declaring that they shall be subject to the progress of the Act of 1867 in this respect. That is in itself a great enough concession for a young nation on this western continent to make to the principle of clerically controlled education. The Provinces themselves have the first right to judge how far they are bound by law or by justice to recognize existing sectarian rights as of their own making, or how much farther they are willing to recognize them. The one safe and clear course for the West is to insist on that. The initiatory right of legislation is not a mere formality. Even if the Provinces granted precisely the same rights as Wilfrid's Bill demands, their legislation might, if serious evils were developing under it, be modified without much difficulty. It sometimes makes a great difference in legal questions where the original right of legislation lies. Federal legislation in this case particurlarly would be apt to have a petrifying effect (Premier Haultain certainly found the right word) on the educational system of the Provinces.

JAMES CAPPON.

Kingston, March 22, 1905.

ORIGINAL CLAUSES OF THE BILL FOR THE NORTH-WEST PROVINCES.

"The provisions of section 93 of the British North America Act shall apply to the said provinces as if the date upon which this act comes into force the territory comprised therein were already a province, the expression, 'the union' in the said section being taken to mean the said date. Subject to the provisions of the said section 93, and in continuance of the principle heretofor sanctioned under the North-West Territories Act, it is enacted that the Legislature of the said province shall pass all necessary laws in respect of education and that it shall therein always be provided :

"(a) That a majority of the rate-payers of any district or portion of said province or of any less portion or sub-division thereof by which name the same is known may establish such schools therein as they think fit and make the necessary collections of rates therefore : and

(b) That the minority of the ratepayers therein, whether Protestant or Roman Catholic may establish separate schools therein, and make the neccessary amendments and collection of rates therefore : and

(c) That in such case the ratepayers establishing such Protestant or Roman Catholic schools shall be liable only to assessment of such rates as they impose upon themselves in respect thereof.

(2) In the appropriation of public monies by the Legislature in aid of education and in the distribution of any monies paid to the Government of a province arising from the school fund established by a Dominion Lands' Act, there shall be no discrimination between the public schools, and such monies shall be applied to the support of public and separate schools in equable shares or proportion.